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# Republican Policy Committee

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## *Help for the Poor — or Left-wing Boondoggle?*

### **Legal Services Corporation 1974 - 1995?**

Among the most controversial features of the FY 1996 Commerce, Justice, State, Judiciary, and Related Agencies appropriations bill (H.R. 2076) is the zeroing-out of funds for the Legal Services Corporation (LSC). Floor amendments to restore LSC funding are expected.

Created in 1974 and last reauthorized in 1977, LSC was designed to provide basic legal assistance to poor Americans. LSC does not directly provide legal services but rather makes grants to some 300 private legal aid societies around the country as determined by a formula based on poverty rates in various service areas.

The FY 1995 appropriation for LSC was \$400 million, and the Clinton Administration asked for \$440 million for FY 1996. The House version of H.R. 2076 recommended \$278 million. Under the Senate's H.R. 2076, LSC would be abolished and its functions replaced by a new \$210 million Civil Legal Assistance Block Grant Program administered by the Office of Justice Programs in the Department of Justice.

The block grant program would require states to competitively bid contracts for the provision of basic legal services and to restrict the use of all funds — from whatever source — available to any entity receiving Federal funds for this purpose. The program is similar to one envisioned in a House measure, H.R. 2277, which has been marked up and is expected to receive consideration by the full House by the end of the month.

[NOTE: In addition to the federal funds, each year LSC grantees receive some \$250 million from other sources, including local and state governments and private sources. A significant portion of the non-federal contributions are from a little-known program called IOLTA — "Interest On Lawyers' Trust Accounts" — funds, which consist of interest generated by money placed in escrow accounts with attorneys, usually in connection with home purchases. This interest money, according to statutes or court decisions in all 50 states beginning in 1979, belongs not to the home purchaser whose principal generated the interest, but to the state, which in turn, via IOLTA, gives it to local LSC grantees.]

## ***Abolishing LSC: "A Devastating Blow to Those Most in Need" . . .***

Defenders of LSC in its current form claim that eliminating LSC and replacing it with a block grant "would strike a devastating blow to those most in need of assistance" [Statement of Administration Policy on the Senate version of H.R. 2076, September 14, 1995].

Senator Hollings, the Ranking Member of the Commerce, Justice, State Subcommittee claims:

"A block grant program likely would increase costs, decrease efficiency, and lower accountability. Ironically, one of the reasons why the Legal Services Corporation was created at the Federal level was that few states provided any significant legal aid to the poor. Further, this new block grant approach would throw into disarray the current system of legal assistance from the Federal, State, and private pro bono services." [S. Rept. 104-139, p. 156]

## ***Or, "An Unaccountable Lobbying Group Promoting Liberal Agendas"?***

However, critics of LSC charge that it is in fact little more than a money trough through which taxpayers are forced to finance activist lawyers who — because of a lack of oversight and accountability — are free to bring court actions in support of a number of liberal causes. This is explored below.

***Lack of Effective Oversight and Noncompliance with Restrictions:*** LSC was designed to fulfill its mandate without interference from the political branches of government. Technically a private organization, LSC is not subject to any Executive branch department or agency. However, as claimed by the National Legal and Policy Center (NLPC), a private watchdog group that promotes ethics and accountability in government, LSC's intended independence has become **unaccountability**:

- The Legal Services Corporation Act of 1974 established "a unique, hybrid structure for the Corporation itself, guaranteeing it would never be accountable." LSC makes grants to separately incorporated private non-profit grantees, some of which make sub-grants to other groups and each other. An 11-member board is appointed by the President, subject to Senate confirmation, but the board in practice has had little influence over how the grantees spend their grants. Nor does the Executive branch have much influence over the LSC budget because, by law, it goes straight from LSC to Congress. The Office of Management and Budget may only review it.

- LSC's status as a private corporation largely exempts it from the federal criminal code pertaining to government officials, such as the Anti-Deficiency Act. Thus, while it is a felony for a federal official to misappropriate federal funds, the LSC Act declares that 'officers and employees of the Corporation shall not be considered officers and employees' of the federal government.
- Restrictions on LSC involvement in controversial issues have been ignored or circumvented, using the "dodge" of non-federal funds: Since most grantees receive at least some funding from IOLTA and other state and local government sources, they may claim that any restricted activities are not conducted with the LSC funds. This is hard to dispute because legal services attorneys do not keep time sheets, effectively preventing oversight. Similarly, claims of attorney-client privilege are abused to prevent oversight.  
[Taken from an NLPC draft, entitled, "Why the Legal Services Corporation Cannot Be Reformed and Should Be Abolished," by Kenneth F. Boehm and Peter Flaherty]

At its creation in 1974, LSC exercised great leeway in determining which local organizations would receive grants. Since that time, local grantees have become in practice the beneficiaries of a guarantee of perpetual funding regardless of performance. In turn, grantee attorneys typically have wide latitude in selecting which cases they will take and what legal issues they will litigate. Often, according to critics, this leads to selecting cases not because they are important to the everyday concerns of needy clients, but because they meet the socially activist interests of the attorneys:

"Under the current system, money is doled out to the legal providers before services are rendered. Unlike the typical attorney-client relationship in which the client hires the attorney, LSC legal providers can select whom they represent. *The legal providers are allowed to pick and choose the specific cases they handle, largely without regard to the wishes of the poor persons seeking legal assistance.* Legal providers are also allowed to file high profile legal actions that serve their own political purposes in an attempt to reshape society to their liking. Sadly, the LSC is more focused on advancing social causes rather than helping the poor with ordinary legal problems. It has become an unaccountable lobbying group dedicated to promoting liberal agendas."

["LSC R.I.P.: The Case for Abolishing the Legal Services Corporation," House Republican Conference, 6/22/95, emphasis added]

**Support for Radical Agendas:** In support for the charge that LSC grantees are using taxpayer funds to further their own left-wing social and political priorities, critics cite a number of cases brought by affiliated attorneys appearing to have little, if any, relation to LSC's core mission. Some examples are noted below:

- The Legal Aid Society of New York sued the New York City Housing Authority to thwart a plan by the Authority to speed up the process for evicting drug dealers from public housing. [*New York Times*, 8/15/95]
- Idaho Legal Aid Services (ILAS) sued the adoptive parents of a four-year-old, half-Sioux Indian boy (who had been with them since he was one day old) so he could be placed with Indian relatives in order to preserve the tribe's cultural integrity; yet, neither the natural mother nor father had sought custody. [*Dallas Morning News*, 10/31/93; *USA Today*, 12/16/93]
- Lehigh Valley Legal Services of Pennsylvania sued on behalf of the parental rights of a 16-year-old juvenile offender over a child he had conceived by the rape of a 13-year-old girl. [*Morning Call*, Allentown, PA, 3/2/95]
- Legal Services of Greater Miami and the Brooklyn Law School Family Law Clinic sued their respective jurisdictions on behalf of homosexual adoptions. [*Cox v. Florida* (Florida Supreme Court), 1995; *New York Law Journal*, 12/23/94]
- The Legal Aid Society of New York and Community Action for Legal Services filed amicus briefs arguing that a homosexual partner has the same right as a spouse to a rent-controlled apartment. [*Braschi v. Stahl Associates* (New York Supreme Court), 1989]
- Central Pennsylvania Legal Services sued the Reading (PA) Housing Authority for refusing to lease an apartment to an unemancipated 16-year-old girl, despite the fact that regulations required lessees to be at least 18 years of age. [*Rodriguez v. Reading Housing Authority* (U.S. Court of Appeals), 1993]
- Atlanta Legal Aid Society, Greater Boston Legal Services, and California Rural Legal Assistance brought court actions to prevent the deportation or denial of residence permits to aliens who had committed serious crimes. [*Gisbert v. U.S. Attorney General* (U.S. Court of Appeals), 1993; *White v. Immigration and Naturalization Service* (U.S. Court of Appeals), 1994; *Naranjo v. Immigration and Naturalization Service*, 1994]
- Texas Rural Legal Aid filed a complaint with the Department of Health and Human Services requesting the department to take action against the McAllen (TX) Medical Center because the Center's security guards wore uniforms allegedly resembling those of the Immigration and Naturalization Service, which may have had the effect of discouraging illegal aliens from seeking medical help. [*Modern Healthcare*, 12/17/90 and 1/28/91]

- California Rural Legal Assistance sued a U.S. Attorney for investigating allegations that deliberate efforts had been made to register unqualified aliens as voters. [*Olagues v. Russoniello* (U.S. Court of Appeals), 1985]
- Georgia National Legal Services filed petitions for the release from a maximum security mental facility of a patient who had cut the throats of both his grandparents for not letting him have their car keys. [*Los Angeles Times*, 11/12/94]
- The National Center for Youth Law won a court injunction to block enforcement of a law requiring parental consent for minors' abortions. [*Recorder*, 7/5/94 and 9/21/94]
- LSC critics claim that spurious cases are often filed by LSC grantees. For example, in what could be looked upon as a form of class-based harassment, landowners were the target of several suits on behalf of farmworkers by such LSC grantees as Friends of Farmworkers and Texas Rural Legal Aid, but all charges eventually were dismissed. [Testimony before the House Committee on the Judiciary, Subcommittee on Commercial and Administrative Law, 6/15/95]
- A number of LSC grantees in Connecticut, Indiana, Michigan, New Jersey, Pennsylvania, and Wisconsin have sued those states to overturn their welfare reform laws that, among other efforts to discourage dependency and save taxpayers' money, limit time spent on welfare, impose work requirements, deny welfare to able-bodied single adults without children, and deny additional AFDC payments for children conceived while the mother was on welfare. [*Hartford Courant*, 4/16/94; *Indianapolis Star*, 2/14/95; *Orlando Sentinel Tribune*, 11/24/91; *New York Times*, 11/9/91; *C. K. v. Shalala*, U.S. District Court; *Pittsburgh Post Gazette*, 9/22&28/94, *V.C. v. Whitburn*, U.S. District Court]

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